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SERVICE DATE - LATE RELEASE AUGUST 3, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-581X

1411 CORPORATION—ABANDONMENT EXEMPTION—IN LANCASTER COUNTY, PA

STB Docket No. AB-529X<sup>1</sup>

MIDDLETOWN & HUMMELSTOWN RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN LANCASTER COUNTY, PA

Decided: August 3, 2001

The 1411 Corporation and the Middletown & Hummelstown Railroad Company (collectively Applicants) filed separate verified notices of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon service over the same line of railroad extending from milepost 39.3, in the borough of Columbia, to milepost 37.2, in West Hempfield Township, a distance of approximately 2.5 miles in Lancaster County, PA (line).<sup>2</sup> Notice of the exemption was served and published in the Federal Register on April 12, 2001 (66 FR 19000). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on May 12, 2001.

By decisions served May 8, 2001 and May 10, 2001, however, the Board extended the effective date to accommodate the offer of financial assistance (OFA) process of 49 U.S.C. 10904 and 49 CFR 1152.27. A formal expression of intent to file an OFA was timely filed by Frank Sahd Salvage Center, Inc. (Sahd). The Board's May 8, 2001 decision also provided that the request by the Shawnee Run Greenway, Inc. (Shawnee), for issuance of a notice of interim trail use and rail banking under the National Trails System Act, 16 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending completion of the OFA process.

On July 5, 2001, Shawnee filed a motion for an exemption under 49 U.S.C. 10502 from 49 U.S.C. 10904 to terminate further OFA proceedings in this case. Shawnee also said that, if the motion were to be denied, it would move to dismiss any OFA filed by Sahd. On July 11,

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<sup>1</sup> These proceedings are being handled together for administrative convenience.

<sup>2</sup> Past agency decisions concerning this line indicated that the line extended from milepost 39.7 to milepost 37.2, and this decision uses those mileposts.

2001, Sahd timely filed an OFA.<sup>3</sup> On August 2, 2001, Shawnee filed a motion to dismiss the OFA.

By decision served July 16, 2001, the Board found Sahd to be a financially responsible entity and postponed the effective date of the abandonment exemption in order to permit the OFA process to proceed.<sup>4</sup> Also, the July 16, 2001 decision set August 10, 2001, as the date on or before which the buyer or seller could request the Board to establish the terms and conditions of the purchase price of the line under the OFA process should the parties be unable to reach agreement.

When Sahd replied to Shawnee's motion for an exemption on July 25, 2001, it concurrently filed a motion to hold the procedural schedule in partial abeyance to permit the parties to negotiate a settlement. On July 27, 2001, Shawnee filed its opposition to Sahd's request, stating that it did not expect negotiations to succeed.

On July 30, 2001, Sahd filed a request to modify its motion to hold the procedural schedule in partial abeyance. Sahd's modified request asks the Board (1) to extend the deadline for submitting a request to set terms until 10 days after the Board releases its decision on Shawnee's motion for an exemption from the OFA process, and (2) to extend the Applicants' right to file a petition for reconsideration of the Board's July 16, 2001 decision finding that Sahd is a financially responsible entity until 5 days after the Board issues a decision on that motion.<sup>5</sup>

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<sup>3</sup> In the OFA filing, Sahd indicated that it would separately respond to Shawnee's motion for an exemption from the OFA process on or before July 25, 2001.

<sup>4</sup> In addition, the Board's July 16, 2001 decision, slip op. at p. 2, n.5, stated that it would address the issues raised by Shawnee's motion for an exemption from the OFA process and the various other filings in this proceeding in a separate decision. Sahd replied to Shawnee's motion for an exemption on July 25, 2001. By letter filed July 19, 2001, the Honorable Rick Santorum, United States Senator from Pennsylvania, indicated his support for Shawnee's request for interim trail use and rail banking. Also, the Colonial Metals Co. and the Pennsylvania Department of Conservation and Natural Resources, by separate letters filed July 25, 2001, and the Pennsylvania Department of Environmental Protection, by letter filed July 27, 2001, indicated their support for Shawnee's request for interim trail use and rail banking and recommended that the Board grant the requested exemption of the abandonment proceeding from any further OFA proceedings.

<sup>5</sup> Appeals of initial decisions issued by the Director of the Office of Proceedings under authority delegated at 49 CFR 1011.8(c) must be filed within 10 days after service of the Director decision. 49 CFR 1011.2(a)(7). In this proceeding, the due date for filing an appeal would have been July 26, 2001.

Sahd's modified motion to hold the procedural schedule in abeyance has merit and will be granted in part. This action will provide the Board with the necessary time to rule on Shawnee's motion for an exemption from the OFA process prior to Sahd's having to file a petition to set terms and conditions, which otherwise is due on August 10, 2001. To require Sahd (or Applicants) to submit the petition to set terms and conditions before the Board has ruled on the motion for an exemption would require Sahd (and other parties, if they filed replies) to expend unnecessary resources in the event that the Board grants the motion for an exemption from further proceedings under 49 U.S.C. 10904. Also, this action will still allow the Board to issue a decision on Shawnee's motion for an exemption prior to September 7, 2001, which Shawnee has requested.

Sahd's request to extend the due date for Applicants to file an appeal of the Director's decision finding that Sahd is financially responsible will be denied. The deadline for filing such an appeal expired on July 26, 2001, without any appeal being filed. Applicants, for whose benefit Sahd is seeking that relief, have not expressed any support or offered any justification for the extension request.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Sahd's modified motion to hold the procedural schedule in partial abeyance is granted, to the extent noted herein.
2. The date on or before which the Applicants or Sahd may request the Board to establish the terms and conditions of the purchase price of the line is extended to a date 10 days after the Board issues a decision ruling on Shawnee's request for an exemption under 49 U.S.C. 10502 from further OFA proceedings in this case.
3. Sahd's request to extend the date the Applicants may file an appeal of the Board's July 16, 2001 decision, finding that Sahd was a financially responsible entity, is denied.
4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary